

**STANDARD FORM OF CONTRACT BETWEEN OWNER AND CONTRACTOR
FOR SUPPLY AND DELIVERY OF MATERIALS – DEQ Contract No.414009**

This Contract is between CONTRACTOR and OWNER, the State of Montana, Department of Environmental Quality (“DEQ”).

WITNESSETH, that Contractor and DEQ for the consideration hereinafter named agree as follows:

ARTICLE 1. SCOPE OF WORK. Contractor shall perform the following work described as follows:

Contractor shall supply and deliver plant materials and vegetated erosion control products intended for planting during remedial and restoration activities primarily in the Upper Clark Fork River Basin and other sites determined by Owner. Unless otherwise agreed to in writing, these materials and products shall be delivered F.O.B, destination at the Clark Fork Site. Plants and vegetated material may be rejected by Owner should they be unfit for their intended purpose.

Contractor may not begin supply and delivery of plant materials and vegetated erosion control products under this Contract until receipt of written authorization from DEQ. This authorization shall be in the form of a task order agreed to by DEQ and Contractor containing:

1. A preamble referencing DEQ, Contractor, the project, operable unit (if applicable), task, and this Agreement.
2. A description of the materials to be supplied and delivered, time frame for performance, total cost of the materials to supply and deliver the material based upon the prices identified in the Proposal.
3. The location within the Clark Fork site where plant materials are to be delivered.
4. Any special conditions not covered in this Agreement.
5. Appropriate attachments.
6. Signatures by authorized representatives of both parties.

The budget specified in each task order shall be the maximum amount for which DEQ is liable, absent any written amendment to this Contractor signed by Contractor and DEQ.

DEQ shall pay Contractor in accordance with State law, this Contract and the terms of the Compensation section of each task order. Contractor shall submit a billing statement (invoice) to DEQ for materials supplied and delivered under this Contract. Invoices shall provide a statement of actual costs in sufficient detail to allow DEQ to evaluate the reasonableness of the charges. Itemized information shall include, without limitation: the Contract number, task order number, invoice number, the site name, the billing period, and the materials supplied and date delivered during the period. A table listing the species of plant, size, quantity and unit price(s) shall be provided for plant materials. The invoice shall also identify the quantity of each vegetated material provided and applicable unit price (identified in the Proposal).

The Contract Documents which shall (together with this executed Contract) comprise the agreement between Owner and Contractor are the RFQ, Contractor’s Proposal, and Task Orders, Task Order Modifications and written amendments authorizing the supply and delivery of any plants or vegetated materials issued hereunder.

ARTICLE 2. TIME OF COMPLETION. The Work to be performed shall commence on the Effective Date of this Contract, which shall be the latter of the three dates of signature. The initial term of the Contract will be shall be three years. The term of this Contract may be extended by written agreement signed by DEQ and Contractor.

ARTICLE 3. CONTRACT SUM. DEQ shall pay Contractor for the actual number of plants and vegetated erosion control material(s) supplied and delivered and accepted, as counted by DEQ's Revegetation Consultant. The unit price(s) plant (or other measure for vegetated erosion control products) shall be those identified in Contractor's Proposal. Unless otherwise mutually agreed, plant or vegetated materials shall be delivered to DEQ, F.O.B. destination Clark Fork Site.

All costs in connection with the work, including, but not limited to, furnishing of materials, equipment, tools, supplies, insurance and providing all necessary labor and supervision to fully complete the work, shall be included in the unit price(s) bid. No item that is required for the proper and successful completion of the work will be paid for outside or in addition to the unit price(s) bid.

ARTICLE 4. PROGRESS PAYMENTS. (see above).

ARTICLE 5. FINAL PAYMENT. Final payment shall be made by DEQ to Contractor in accordance with the time periods specified by state law, when: 1) the work has been completed to DEQ's satisfaction and, 2) the Contract is fully performed.

ARTICLE 6. JURISDICTION AND VENUE. The laws of Montana govern this Contract. The parties agree that any litigation concerning this contract, unless the parties agree to arbitration or mediation, must be brought in the First Judicial District in and for the County of Lewis and Clark, State of Montana, and the parties consent to personal jurisdiction, subject matter jurisdiction, and venue in that court. Each party shall pay its own costs and attorney fees.

ARTICLE 7. MISCELLANEOUS.

1. Taxes/Permits/Fees. Contractor shall secure and pay for all permits and inspections, give all notices, pay all taxes and fees and comply with all laws, ordinances, rules, regulations and lawful orders bearing on the performance of the work.

2. Labor/Materials Equipment. Unless otherwise specified, Contractor shall provide and pay for all labor, materials, equipment, tools, utilities, transportation, temporary construction and services for the proper execution and completion of the work. Unless otherwise specified, all material and equipment provided shall be new or in good condition. All workmanship shall be of good quality and in keeping with the standard of the respective trades.

3. Indemnification and Insurance. Contractor shall maintain for the duration of the contract, at its cost and expense, insurance against claims for injuries to persons or damages to property, both Comprehensive General Liability insurance and Automobile liability insurance, which may arise from or in connection with the performance of the work by Contractor, its agents, employees, representatives, assigns, or subcontractors.

a. Hold Harmless and Indemnification: Contractor agrees to protect, defend, and save the State of Montana, its elected and appointed officials, agents, and employees harmless from and against all claims, demands, causes of action of any kind or character, including the cost of defense thereof, on account of bodily or personal injuries, death, or damage to property arising out of services or work performed or omissions of work or in any way resulting from the acts, negligent or otherwise, or omissions of Contractor, its agents, employees, assigns, and/or subcontractors under this Contract.

b. Contractor shall carry **Workers' Compensation Insurance**, maintained at the limits required by statute. Such Workers' Compensation Insurance shall protect Contractor from claims made by his own employees, the employees of any Subcontractor, and also claims made by anyone directly or indirectly employed by Contractor or Subcontractor. Contractor shall require each Subcontractor similarly to provide Workers' Compensation Insurance.

4. Construction Contractor Registration. Contractor is not a construction contractor for whom contractor registration is required under Sections 39-9-102 and 39-9-302 MCA

5. Gross Receipts Tax. This is not a public construction contract as defined by Section 15-50-101(3) and as applicable to Section 15-50-206, MCA. No gross receipts tax will apply.

6. Equal Employment Opportunity. All hiring and other employment practices shall be non-discriminatory, based on merit and qualifications without regard to race, color, religion, creed, political ideas, sex, age, marital status, physical or mental handicap, or national origin.

7. Record Keeping. Payrolls and basic records pertaining to the project shall be kept on a generally recognized accounting basis and shall be available to the Owner, Legislative Auditor, the Legislative Fiscal Analyst or his authorized representative at mutually convenient times. Contractor shall keep accounting records for a period of three years after completion and acceptance of the project by the Owner.

8. Montana Prevailing Wage Rate Requirements. This materials supply contract is not a contract for Construction Services as defined by Section 18-2-401 MCA; therefore Montana Prevailing Wage Rates do not apply.

9. Site Cleanup. Contractor shall properly dispose of all trash incidental to the supply and delivery of plant materials and vegetated erosion control materials.

IN WITNESS WHEREOF, the parties hereto have executed this Contract. The Contract shall be effective only after signature by both parties. The Effective Date of this Contract shall be the later of the dates of signature.

CONTRACTOR:

Company

BY: _____
Date

Taxpayer's I.D. No. _____

OWNER:

STATE OF MONTANA
DEPARTMENT OF ENVIRONMENTAL QUALITY

VICKI WOODROW Date
Contracts Officer
Financial Services
Metcalf Building
1520 East Sixth Avenue
PO Box 200901
Helena, Montana 59620-0901

Approved for Legal Content:

DEQ Legal Counsel

Date